HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.22891 of 2002

Dated: 04.07.2007

Between:

Indupuri Sambamurthy

... Petitioner

AND

The Commissioner, Salur Municipality,
Vizianagaram district.
and another.

... Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.22891 of 2002

ORDER:-

This writ petition is filed for a writ of mandamus to set aside the demand notice dated 18.10.2002 issued by respondent No.1 demanding Rs.79,917/- from the petitioner in pursuance of the resolution dated 30.9.2002 of the Vizianagaram Municipal Council.

Petitioner was the successful bidder to collect market fee from the traders of the Salur Municipality for the period from 1.4.2002 to 31.3.2003. An order to that effect was passed by respondent No.1 on 30.3.2002 permitting him to carry on collection of market fee on behalf of Salur Municipality. By two representations dated 25.7.2002 and 30.7.2002, the petitioner mentioned certain reasons which, according to him, were disabling him from collecting the market fee properly. He therefore requested respondent No.1 to terminate the contract from 31.7.2002. Acting on the representations of the petitioner the 1st respondent has conducted a fresh auction and later passed a resolution on 30.9.2002 to recover the loss of Rs.79,919/- sustained by the municipality due to re-auction. A notice dated 18.10.2002 was issued by respondent No.1 wherein the petitioner was called upon to pay the said sum within seven days of receipt of the said notice. Questioning this notice, the petitioner filed the present writ petition.

Heard Sri C.Upendra, learned counsel representing Sri E.V.Bhagiratha Rao. None appeared for the respondents and no counter affidavit is filed.

Learned counsel for the petitioner submitted that in view of the various difficulties faced by the petitioner he made representations to terminate the lease as it has become impossible to collect the market fee. In spite of addressing the problems faced by the petitioner, though the municipal council terminated the lease granted in favour of the petitioner, the 1st respondent municipality is seeking to recover the alleged loss incurred by it on account of re-auction. He stated that before passing such resolution, the municipality has not issued any notice to the petitioner and afforded an opportunity to him to explain his case. He therefore says that the action of the respondents is in violation of the Principles of Natural Justice.

After considering the arguments of the learned counsel for the petitioner and perusing the material on record, I am of the considered view that ends of justice would be met if the respondents are directed to give the petitioner an opportunity before seeking to recover the alleged loss. The reason that weighed with me in giving this direction is that the tenor of the two representations made by the petitioner would show that it is out of frustration that the petitioner sought for termination of the contract. There is nothing on record to show that the municipality has tried to solve the problems of the petitioner. Having cancelled the license on the request of the petitioner, it has again sought to recover the alleged loss. Principles of Natural Justice require that before taking action to recover the alleged loss the petitioner ought to have been given action oriented notice to put forth his case. As the respondents failed to follow this procedure, I deem it proper to direct them to follow the principles of Natural Justice.

In the result, the writ petition is allowed. The impugned notice is set aside and the respondents are given liberty to initiate fresh action and pass order after giving action oriented notice to the petitioner and opportunity of being heard.

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C.V.NAGARJUNA REDDY,J

Date:04.07.2007
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